

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

CHARLESTON DIVISION

WESBANCO BANK, INC.,

Plaintiff,

v.

CIVIL ACTION NO. 2:19-cv-00821
HONORABLE IRENE C. BERGER

TODD LESSER

Defendant.

PLAINTIFF WESBANCO BANK, INC.'S MOTION FOR DEFAULT JUDGMENT

Plaintiff, WesBanco Bank, Inc., a West Virginia banking corporation (“WesBanco”), by counsel, pursuant to Rule 55(b) of the Federal Rules of Civil Procedure, this Court’s March 31, 2020 Order directing entry of default against Defendant Todd Lesser (the “Defendant”) (Doc. 9), and the March 31, 2020 Entry of Default by Clerk against the Defendant (Doc. 11) moves for an entry of default judgment against the Defendant. In support of its Motion, WesBanco states as follows:

1. On November 20, 2019, WesBanco filed the instant action for money judgment on the outstanding deficiency balance owed on a loan made by WesBanco to the Defendant (the “Note”).

2. This Court has personal jurisdiction over the Defendant because the Defendant’s activities within the Southern District of West Virginia give rise to sufficient contacts for this Court to exercise jurisdiction. The Defendant: (a) approached WesBanco at its offices in Charleston, West Virginia, and applied for the loans with WesBanco at its offices in Charleston, West Virginia; (b) funds were extended by WesBanco at its offices in Charleston, West Virginia to the Defendant;

(c) the loans were payable to WesBanco at its offices in Charleston, West Virginia; (d) the purpose of the loan was to finance the Defendant's acquisition of an office building in Charleston, West Virginia; (e) the loan was secured by the office building; and (f) the indebtedness that is the subject of the Complaint is the deficiency balance on the loan following a foreclosure sale conducted in Charleston, West Virginia.

3. This Court has subject matter jurisdiction based upon diversity of the parties pursuant to 28 U.S.C. § 1332 because WesBanco is incorporated in the state of West Virginia, doing business in the Southern District of West Virginia. The Defendant is a California resident. WesBanco is entitled to judgment exceeding \$75,000.

4. The Complaint against the Defendant seeks judgment for the balance due on the Note. Based on the Affidavit of James Sweeney, Vice President at WesBanco, attached as **Exhibit A**, the payoff balance was \$136,983.69, on March 31, 2020, and the Note accrues interest as a daily rate of \$11.90 each day after March 31, 2020.

5. In addition to the payoff loan balance due, WesBanco seeks judgment for its legal fees and costs associated with preparing and pursuing the Complaint against the Defendant. The Note, attached as **Exhibit B**, provides in the paragraph titled "Attorneys' Fees; Expenses," the following:

Lender may hire or pay someone else to help collect this Note if Borrower does not pay. Borrower will pay Lender that amount. This includes, subject to any limits under applicable law, Lender's attorneys' fees and Lenders' legal expenses, whether or not there is a lawsuit, including attorneys' fees, expenses for bankruptcy proceedings (including efforts to modify or vacate any automatic stay or injunction), and appeals. If not prohibited by applicable law, Borrower also will pay any court costs, in addition to all other sums provided by law.

6. The law firm Flaherty Sensabaugh Bonasso, PLLC has billed WesBanco the sum of \$5,755.00 in legal fees and costs for preparing and pursuing the Complaint against the Defendant in this civil action. *See* Aff. of James W. Lane, Jr., attached as **Exhibit C**.

7. WesBanco seeks judgment for the Note balance of \$136,983.69 and legal fees and costs of \$5,755.00.

Allegations

8. On February 18, 2020, the Defendant was properly served in La Jolla, California by substitute service at his primary residence by a private investigator hired by WesBanco, Mr. Gregory Long. (*See* Aff. of Service of Gregory Long, attached as **Exhibit D**). The return of service was filed with this Court on or about March 19, 2020 (Doc. 7).

9. On multiple occasions, prior to service, the Defendant evaded WesBanco's attempts at effectuating service of process on him. (*See id.*).

10. The Defendant was served with the summons and Complaint pursuant to Federal Rule of Civil Procedure 4(e)(2)(B). (*See id.*); (*see also* Doc. 7)

11. District courts have found the tactics utilized by private investigator Gregory Long in effectuating service of process on the Defendant to be proper where, like the Defendant in this case, a defendant attempts to evade service or refuses to accept service. *See Travelers Cas. & Sur. Co. of Am. v. Brenneke*, 551 F.3d 1132, 1135 (9th Cir. 2009) ("If the defendant attempts to evade service or refuses to accept delivery after being informed by the process server of the nature of the papers, it usually is sufficient for the process server to touch the party to be served with the papers and leave them in the defendant's presence or, if a touching is impossible, simply to leave them in the defendant's physical proximity. It is not crucial in these circumstances that the defendant does not take the papers into his or her possession. Since this procedure satisfies the objective of giving

notice to the party to be served, it seems to be entirely sufficient to satisfy the delivery requirement Rule 4(e)(2).”) (quoting 4A Wright & Miller, *Fed. Prac. & Proc.* § 1095 at 516–17 (3d ed. 2002)).

12. On March 31, 2020, the Clerk of Court made entry of default against the Defendant for failure to answer, plead, or otherwise defend this matter. (Doc. 11)

13. On April 10, 2020, the Return Receipt Card for the Clerk’s Entry of Default (the “Return Receipt Card”) was accepted and signed by an individual at the Defendant’s primary residence. (Doc. 12) The Return Receipt Card was signed with the notation “C-19” in the recipient signature block and the individual who signed did not refuse delivery on the basis that the Defendant did not reside there.

14. Pursuant to the Clerk of Court’s entry of default against the Defendant, entry of Default Judgment by the Clerk of Court is proper as it relates to WesBanco’s economic damages pursuant to Rule 55(b)(1) of the Federal Rules of Civil Procedure.

15. Rule 55(b)(1) permits the Clerk to enter a default judgment against a defendant. Rule 55(b)(1) states, “[i]f the plaintiff’s claim is for a sum certain or a sum that can be made certain by computation, the clerk — on the plaintiff’s request, with an affidavit showing the amount due — must enter judgment for that amount and costs against a defendant who has been defaulted for not appearing and who is neither a minor nor an incompetent person.”

- a. Pursuant to Rule 55(b)(1), WesBanco’s claim for economic damages has been made certain by computation, and as such, WesBanco respectfully requests the Clerk of Court enter a default judgment against the Defendant for \$136,983.69 plus legal fees and costs of \$5,755.00, plus interest continuing to accrue on the judgment until paid in full;

16. In the event the Court determines the Plaintiff's sum certain computation of damages does not satisfy the requirements of Rule 55(b)(1), WesBanco alternatively requests that the Court enter a default judgment and set a hearing to determine the total amount of the economic damages WesBanco has suffered as a result of the events giving rise to this cause of action.

WHEREFORE, for the reasons set forth herein, Plaintiff WesBanco Bank, Inc. respectfully requests that the Clerk of Court enter a default judgment against the Defendant, Todd Lesser, for \$136,983.69 plus legal fees and costs of \$5,755.00, plus interest continuing to accrue on the judgment until paid in full.

Respectfully Submitted,

WESBANCO BANK, INC.

By Counsel,

/s/ William J. Aubel

James W. Lane, Jr. (WVSB #6483)

William J. Aubel (WVSB #13097)

Flaherty Sensabaugh Bonasso PLLC

200 Capitol Street

P.O. Box 3843

Charleston, WV 25338

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**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

WESBANCO BANK, INC.,

Plaintiff,

v.

CIVIL ACTION NO: 2:19-cv-00821
HONORABLE IRENE C. BERGER

TODD LESSER,

Defendant.

AFFIDAVIT

I, James Sweeney, Vice President at WesBanco Bank, Inc. ("WesBanco"), do hereby solemnly swear:

1. I am familiar with the materials contained in the loan files giving rise to the above-stated cause of action.

2. On November 12, 2004, Defendant signed a Promissory Note (the "Note") payable to WesBanco in the original principal amount due of \$720,000.00, payable in monthly installments.

3. To secure repayment of the Note, Defendant granted WesBanco a deed of trust on real property located at 206 Capitol Street, Charleston, WV 25301 (the "Property"). A copy of the deed of trust is attached to this Affidavit as **Exhibit 1**.

4. Defendant defaulted under the terms of the Note for failing to make required payments and, accordingly, WesBanco foreclosed on the Property.

5. On March 15, 2018, a Trustee under the deed of trust sold the Property by way of a public foreclosure sale. At the time of the foreclosure sale, the payoff balance due on the Note was \$328,954.20. A complete history of the payments on the Note is attached to this Affidavit as **Exhibit 2**.

6. The Property sold for \$242,000.00. Expenses associated with conducting the foreclosure sale were \$28,823.51, resulting in net sale proceeds of \$213,176.49 applied to the Note.

7. As of March 31, 2020, the outstanding deficiency balance due and owing is \$136,983.69.

8. I reviewed the Exhibits attached to WesBanco's Motion for Default Judgment, and the said documents are true and correct copies of the documents they purport to be.

Executed: APRIL 10th, 2020.

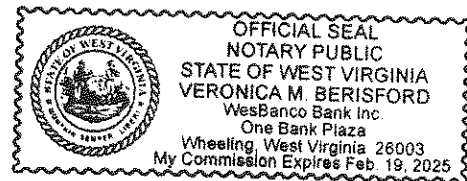
James Sweeney VP
James Sweeney, Vice President
WesBanco Bank, Inc.

STATE OF West Virginia:
COUNTY OF OHIO:

Taken, subscribed and sworn to before me by James Sweeney, Vice President at WesBanco Bank, Inc., on APRIL 10th, 2020.

My commission expires: 2-19-2025.

Notary Public: Veronica M Berisford.



RECORDATION REQUESTED BY:

WesBanco Bank, Inc.
West Side Office
300 Tennessee Avenue
Charleston, WV 25302

WHEN RECORDED MAIL TO:

WesBanco Bank, Inc.
1 Bank Plaza
Wheeling, WV 26003

SEND TAX NOTICES TO:

Todd Leaser
2717 Hidden Valley Road
La Jolla, CA 92037

DEED 3192 751
Recorded in Above Book and Page
11/16/2004 03:23:17 PM
Allen Y. King
County Clerk
Kanawha County, WV
Deed Tax 0.00
Recording Fee 22.00
TOTAL 22.00

FOR RECORDER'S USE ONLY

DEED OF TRUST

MAXIMUM LIEN. The lien of this Deed of Trust shall not exceed at any one time \$720,000.00.

THIS DEED OF TRUST is dated November 12, 2004, among Todd Leaser, whose address is 2717 Hidden Valley Road, La Jolla, CA 92037 ("Grantor"); WesBanco Bank, Inc., whose address is West Side Office, 300 Tennessee Avenue, Charleston, WV 25302 (referred to below sometimes as "Lender" and sometimes as "Beneficiary"); and Matthew D. Smith, whose address is in the County of, Kanawha, WV (referred to below as "Trustee").

CONVEYANCE AND GRANT. For and in consideration of the indebtedness and trusts set forth in this Deed of Trust and the sum of ten dollars (\$10.00) cash in hand paid, the receipt and sufficiency of which are hereby acknowledged, Grantor does hereby GRANT and CONVEY unto Trustee, with power of sale, the following described real property, together with all existing or subsequently erected or affixed buildings, improvements and fixtures; all easements, rights of way, and appurtenances; all water, water rights and ditch rights (including stock in utilities with ditch or irrigation rights); and all other rights, royalties, and profits relating to the real property, including without limitation any right, title and interest of Grantor in all minerals, oil, gas, geothermal and similar matters, (the "Real Property") located in Kanawha County, State of West Virginia:

See Exhibit "A", which is attached to this Deed of Trust and made a part of this Deed of Trust as if fully set forth herein.

The Real Property or its address is commonly known as 206 Capitol Street, Charleston, WV 25301-2218.

The Property covered by this Deed of Trust specifically includes all fixtures, now or hereafter located on the Real Property, and this Deed of Trust shall serve as a fixture filing for purposes of West Virginia law.

Grantor presently assigns to Lender (also known as Beneficiary in this Deed of Trust) all of Grantor's right, title, and interest in and to all present and future leases of the Property and all Rents from the Property. In addition, Grantor grants to Lender a Uniform Commercial Code security interest in the Personal Property and Rents.

THIS DEED OF TRUST, INCLUDING THE ASSIGNMENT OF RENTS AND THE SECURITY INTEREST IN THE RENTS AND PERSONAL PROPERTY, IS GIVEN TO SECURE (A) PAYMENT OF THE INDEBTEDNESS AND (B) PERFORMANCE OF ANY AND ALL OBLIGATIONS UNDER THE NOTE, THE RELATED DOCUMENTS, AND THIS DEED OF TRUST. THIS DEED OF TRUST IS GIVEN AND ACCEPTED ON THE FOLLOWING TERMS:

PAYMENT AND PERFORMANCE. Except as otherwise provided in this Deed of Trust, Grantor shall pay to Lender all amounts secured by this Deed of Trust as they become due, and shall strictly and in a timely manner perform all of Grantor's obligations under the Note, this Deed of Trust, and the Related Documents.

POSSESSION AND MAINTENANCE OF THE PROPERTY. Grantor agrees that Grantor's possession and use of the Property shall be governed by the following provisions:

Possession and Use. Until the occurrence of an Event of Default, Grantor may (1) remain in possession and control of the Property; (2) use, operate or manage the Property; and (3) collect the Rents from the Property.

Duty to Maintain. Grantor shall maintain the Property in tenable condition and promptly perform all repairs, replacements, and maintenance necessary to preserve its value.

Compliance With Environmental Laws. Grantor represents and warrants to Lender that: (1) During the period of Grantor's ownership of the Property, there has been no use, generation, manufacture, storage, treatment, disposal, release or threatened release of any Hazardous Substance by any person on, under, about or from the Property; (2) Grantor has no knowledge of, or reason to believe that there has been, except as previously disclosed to and acknowledged by Lender in writing, (a) any breach or violation of any Environmental Laws, (b) any use, generation, manufacture, storage, treatment, disposal, release or threatened release of any Hazardous Substance on, under, about or from the Property by any prior owners or occupants of the Property, or (c) any actual or threatened litigation or claims of any kind by any person relating to such matters; and (3) Except as previously disclosed to and acknowledged by Lender in writing, (a) neither Grantor nor any tenant, contractor, agent or other authorized user of the Property shall use, generate, manufacture, store, treat, dispose of or release any Hazardous Substance on, under, about or from the Property; and (b) any such activity shall be conducted in compliance with all applicable federal, state, and local laws, regulations and

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ordinances, including without limitation all Environmental Laws. Grantor authorizes Lender and its agents to enter upon the Property to take any necessary actions, at Grantor's expense, as Lender may deem appropriate to determine compliance of the Property with the terms of the Deed of Trust. Any inspections or tests made by Lender shall be for Lender's purposes only and shall not be construed to create any responsibility or liability on the part of Lender to Grantor or to any other person. The representations and warranties contained herein are based on Grantor's due diligence in investigating the Property for Hazardous Substances. Grantor hereby (1) releases, defends, holds harmless and indemnifies any future claims against Lender for indemnity or contribution in the event Grantor becomes liable for cleanup or other costs attributable to such laws; and (2) agrees to indemnify and hold harmless Lender against any and all claims, losses, damages, damages, penalties and expenses which Lender may directly or indirectly sustain or suffer resulting from a breach of this section of the Deed of Trust, up to a consequence of any use, generation, manufacture, storage, disposal, release or threatened release occurring prior to Grantor's ownership or interest in the Property, whether or not the same was or should have been known to Grantor. The provisions of this section of the Deed of Trust, including the obligation to indemnify, shall survive the payment of the indebtedness and the satisfaction and reconveyance of the lien of this Deed of Trust and shall not be affected by Lender's acquisition of any interest in the Property, whether by foreclosure or otherwise.

Nuisance, Waste. Grantor shall not cause, conduct or permit any nuisance nor commit, permit, or suffer any stripping of or waste on or to the Property or any portion of the Property. Without limiting the generality of the foregoing, Grantor will not remove, or grant to any other party the right to remove, any timber, minerals (including oil and gas), coal, clay, gravel or rock products without Lender's prior written consent.

Removal of Improvements. Grantor shall not demolish or remove any Improvements from the Real Property without Lender's prior written consent. As a condition to the removal of any Improvements, Lender may require Grantor to make arrangements satisfactory to Lender to replace such Improvements with Improvements of at least equal value.

Lender's Right to Enter. Lender and Lender's agents and representatives may enter upon the Real Property at all reasonable times to attend to Lender's interests and to inspect the Real Property for purposes of Grantor's compliance with the terms and conditions of the Deed of Trust.

Compliance with Governmental Requirements. Grantor shall promptly comply with all laws, ordinances, and regulations, now or hereafter in effect, of all governmental authorities applicable to the use or occupancy of the Property, including without limitation, the Americans With Disabilities Act. Grantor may contest in good faith any such law, ordinance, or regulation and without compliance during any proceeding, including appropriate appeals, so long as Grantor has notified Lender in writing prior to doing so and so long as, in Lender's sole opinion, Lender's interests in the Property are not jeopardized. Lender may require Grantor to post adequate security of a surety bond, reasonably satisfactory to Lender, to protect Lender's interest.

Duty to Protect. Grantor agrees neither to abandon or leave unattended the Property. Grantor shall do all other acts, in addition to those acts set forth above in this section, which from the character and use of the Property are reasonably necessary to protect and preserve the Property.

DUE ON SALE - CONSENT BY LENDER. Lender may, at Lender's option, declare immediately due and payable all sums secured by this Deed of Trust upon the sale or transfer, without Lender's prior written consent, of all or any part of the Real Property, or any interest in the Real Property. A "sale or transfer" means the conveyance of Real Property or any right, title or interest in the Real Property; whether legal, beneficial or equitable; whether voluntary or involuntary; whether by outright sale, deed, installment sale contract, land contract, contract for deed, leasehold interest with a term greater than three (3) years, lease-option contract, or by sale, assignment, or transfer of an interest in the Real Property in or to any land trust holding title to the Real Property, or by any other method of conveyance of an interest in the Real Property. However, this option shall not be exercised by Lender if such exercise is prohibited by federal law or by West Virginia law.

TAXES AND LIENS. The following provisions relating to the taxes and liens on the Property are part of this Deed of Trust:

Payment. Grantor shall pay when due (and in all events prior to delinquency) all taxes, special taxes, assessments, charges (including water and sewer), fines and impositions levied against or on account of the Property, and shall pay when due all claims for work done on or for services rendered or material furnished to the Property. Grantor shall maintain the Property free of all liens having priority over or equal to the interest of Lender under this Deed of Trust, except for the lien of taxes and assessments not due and except as otherwise provided in this Deed of Trust.

Right to Contest. Grantor may withhold payment of any tax, assessment, or claim in connection with a good faith dispute over the obligation to pay, so long as Lender's interest in the Property is not jeopardized, if a lien arises or is filed as a result of nonpayment. Grantor shall within fifteen (15) days after the lien arises or, if a lien is filed, within fifteen (15) days after Grantor has notice of the filing, secure the discharge of the lien, or if requested by Lender, deposit with Lender cash or a sufficient corporate surety bond or other security satisfactory to Lender in an amount sufficient to discharge the lien plus any costs and attorneys' fees, or other charges that could accrue as a result of a foreclosure or sale under the lien. In any contest, Grantor shall defend itself and Lender and shall satisfy any adverse judgment out of property not subject to this Deed of Trust before enforcement against the Property. Grantor shall name Lender as an additional obligee under any surety bond furnished in the contest proceedings.

Evidence of Payment. Grantor shall upon demand furnish to Lender satisfactory evidence of payment of the taxes or assessments and shall authorize the appropriate governmental official to deliver at any time a written statement of the taxes and assessments against the Property.

Notice of Construction. Grantor shall notify Lender at least fifteen (15) days before any work is commenced, any services are furnished, or any materials are supplied to the Property, if any mechanic's lien, materialman's lien, or other lien could be asserted on account of the work, services, or materials. Grantor will upon request of Lender furnish to Lender advance assurances satisfactory to Lender that Grantor can and will pay the cost of such improvements.

PROPERTY DAMAGE INSURANCE. The following provisions relating to insuring the Property are a part of this Deed of Trust,

Maintenance of insurance. Grantor shall procure and maintain policies of fire insurance with standard extended coverage endorsements on a fair value basis for the full insurable value covering all improvements on the Real Property in an amount sufficient to avoid application of any coinsurance clauses, and with a standard mortgage clause in favor of Lender. Grantor shall also procure to avoid application of any coinsurance clauses, and with a standard mortgage clause in favor of Lender. Grantor shall also procure

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and maintain comprehensive general liability insurance in such coverage amounts as Lender may request with Trustee and Lender being named as additional insureds in such liability insurance policies. Additionally, Grantor shall maintain such other insurance, including but not limited to hazard, business interruption, and boiler insurance, as Lender may reasonably require. Policies shall be written in form, amounts, coverages and basis reasonably acceptable to Lender and issued by a company or companies reasonably acceptable to Lender. Grantor, upon request of Lender, will deliver to Lender from time to time the policies or certificates of insurance in form satisfactory to Lender, including stipulations that coverages will not be cancelled or diminished without at least thirty (30) days prior written notice to Lender. Each insurance policy also shall include an endorsement providing that coverage in favor of Lender will not be impaired in any way by any act, omission or default of Grantor or any other person. Should the Real Property be located in an area designated by the Director of the Federal Emergency Management Agency as a special flood hazard area, Grantor agrees to obtain and maintain Federal Flood insurance, if available, within 45 days after notice is given by Lender that the Property is located in a special flood hazard area, for the full unpaid principal balance of the loan and any prior liens on the property securing the loan, up to the maximum policy limits set under the National Flood Insurance Program, or as otherwise required by Lender, and to maintain such insurance for the term of the loan.

Application of Proceeds. Grantor shall promptly notify Lender of any loss or damage to the Property. Lender may make proof of loss if Grantor fails to do so within fifteen (15) days of the casualty. Whether or not Lender's security is impaired, Lender may, at Lender's election, receive and retain the proceeds of any insurance and apply the proceeds to the reduction of the indebtedness, payment of any lien affecting the Property, or the restoration and repair of the Property. If Lender elects to apply the proceeds to restoration and repair, Grantor shall repair or replace the damaged or destroyed improvements in a manner satisfactory to Lender. Lender shall, upon satisfactory proof of such expenditure, pay or reimburse Grantor from the proceeds for the reasonable cost of repair or restoration if Grantor is not in default under this Deed of Trust. Any proceeds which have not been disbursed within 180 days after their receipt and which Lender has not committed to the repair or restoration of the Property shall be used first to pay any amount owing to Lender under this Deed of Trust, then to pay accrued interest, and the remainder, if any, shall be applied to the principal balance of the indebtedness. If Lender holds any proceeds after payment in full of the indebtedness, such proceeds shall be paid to Grantor as Grantor's interests may appear.

Grantor's Report on Insurance. Upon request of Lender, however not more than once a year, Grantor shall furnish to Lender a report on each existing policy of insurance showing: (1) the name of the insurer; (2) the risks insured; (3) the amount of the policy; (4) the property insured, the then current replacement value of such property, and the manner of determining that value; and (5) the expiration date of the policy. Grantor shall, upon request of Lender, have an independent appraiser satisfactory to Lender determine the cash value replacement cost of the Property.

LENDER'S EXPENDITURES. If any action or proceeding is commenced that would materially affect Lender's interest in the Property or if Grantor fails to comply with any provision of this Deed of Trust or any Related Documents, including but not limited to Grantor's failure to discharge or pay when due any amounts Grantor is required to discharge or pay under this Deed of Trust or any Related Documents, Lender on Grantor's behalf may (but shall not be obligated to) take any action that Lender deems appropriate, including but not limited to discharging or paying all taxes, liens, security interests, encumbrances and other claims, at any time levied or placed on the Property and paying all costs for insuring, maintaining and preserving the Property. All such expenditures incurred or paid by Lender for such purposes will then bear interest at the rate charged under the Note from the date incurred or paid by Lender to the date of repayment by Grantor. All such expenses will become a part of the indebtedness and, at Lender's option, will (A) be payable on demand; (B) be added to the balance of the Note and be apportioned among and be payable with any installment payments to become due during either (1) the term of any applicable insurance policy; or (2) the remaining term of the Note; or (C) be treated as a balloon payment which will be due and payable at the Note's maturity. The Deed of Trust also will secure payment of these amounts. Such right shall be in addition to all other rights and remedies to which Lender may be entitled upon Default.

WARRANTY; DEFENSE OF TITLE. The following provisions relating to ownership of the Property are a part of this Deed of Trust:

Title. Grantor warrants that: (a) Grantor holds good and marketable title of record to the Property in fee simple, free and clear of all liens and encumbrances other than those set forth in the Real Property description or in any title insurance policy, title report, or final title opinion issued in favor of, and accepted by, Lender in connection with this Deed of Trust, and (b) Grantor has the full right, power, and authority to execute and deliver this Deed of Trust to Lender.

Defense of Title. Subject to the exception in the paragraph above, Grantor warrants and will forever defend the title to the Property against the lawful claims of all persons. In the event any action or proceeding is commenced that questions Grantor's title or the interest of Trustee or Lender under this Deed of Trust, Grantor shall defend the action at Grantor's expense. Grantor may be the nominal party in such proceeding, but Lender shall be entitled to participate in the proceeding and to be represented in the proceeding by counsel of Lender's own choice, and Grantor will deliver, or cause to be delivered, to Lender such instruments as Lender may request from time to time to permit such participation.

Compliance With Laws. Grantor warrants that the Property and Grantor's use of the Property complies with all existing applicable laws, ordinances, and regulations of governmental authorities.

Survival of Representations and Warranties. All representations, warranties, and agreements made by Grantor in this Deed of Trust shall survive the execution and delivery of this Deed of Trust, shall be continuing in nature, and shall remain in full force and effect until such time as Grantor's indebtedness shall be paid in full.

CONDEMNATION. The following provisions relating to condemnation proceedings are a part of this Deed of Trust:

Proceedings. If any proceeding in condemnation is filed, Grantor shall promptly notify Lender in writing, and Grantor shall promptly take such steps as may be necessary to defend the action and obtain the award. Grantor may be the nominal party in such proceeding, but Lender shall be entitled to participate in the proceeding and to be represented in the proceeding by counsel of its own choice, and Grantor will deliver, or cause to be delivered, to Lender such instruments and documentation as may be requested by Lender from time to time to permit such participation.

Application of Net Proceeds. If all or any part of the Property is condemned by eminent domain proceedings or by any proceeding or purchase in lieu of condemnation, Lender may at its election require that all or any portion of the net proceeds of the award be applied

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(Continued)

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to the Indebtedness or the repair or restoration of the Property. The net proceeds of the award shall mean the award after payment of all reasonable costs, expenses, and attorneys' fees incurred by Trustee or Lender in connection with the condemnation.

IMPOSITION OF TAXES, FEES AND CHARGES BY GOVERNMENTAL AUTHORITIES. The following provisions relating to governmental taxes, fees and charges are a part of this Deed of Trust:

Current Taxes, Fees and Charges. Upon request by Lender, Grantor shall execute such documents in addition to this Deed of Trust and take whatever other action is requested by Lender to perfect and continue Lender's lien on the Real Property. Grantor shall reimburse Lender for all taxes, as described below, together with all expenses incurred in recording, perfecting or continuing this Deed of Trust, including without limitation all taxes, fees, documentary stamps, and other charges for recording or registering this Deed of Trust.

Taxes. The following shall constitute taxes to which this section applies: (1) a specific tax upon this type of Deed of Trust or upon all or any part of the Indebtedness secured by this Deed of Trust; (2) a specific tax on Grantor which Grantor is authorized or required to deduct from payments on the Indebtedness secured by this type of Deed of Trust; (3) a tax on this type of Deed of Trust chargeable against the Lender or the holder of the Note; and (4) a specific tax on all or any portion of the Indebtedness or on payments of principal and interest made by Grantor.

Subsequent Taxes. If any tax to which this section applies is enacted subsequent to the date of this Deed of Trust, this event shall have the same effect as an Event of Default, and Lender may exercise any or all of its available remedies for an Event of Default as provided below unless Grantor either (1) pays the tax before it becomes delinquent, or (2) contests the tax as provided above in the Taxes and Liens section and deposits with Lender cash or a sufficient corporate surety bond or other security satisfactory to Lender.

SECURITY AGREEMENT: FINANCING STATEMENTS. The following provisions relating to this Deed of Trust as a security agreement are a part of this Deed of Trust:

Security Agreement. This instrument shall constitute a Security Agreement to the extent any of the Property constitutes fixtures, and Lender shall have all of the rights of a secured party under the Uniform Commercial Code as amended from time to time.

Security Interest. Upon request by Lender, Grantor shall take whatever action is requested by Lender to perfect and continue Lender's security interest in the Rents and Personal Property. In addition to recording this Deed of Trust in the real property records, Lender may, at any time and without further authorization from Grantor, file the executed counterparts, copies or reproductions of this Deed of Trust as a financing statement. Grantor shall reimburse Lender for all expenses incurred in perfecting or continuing this security interest. Upon default, Grantor shall not remove, sever or detach the Personal Property from the Property. Upon default, Grantor shall assemble any Personal Property not affixed to the Property in a manner and at a place reasonably convenient to Grantor and Lender and make it available to Lender within three (3) days after receipt of written demand from Lender to the extent permitted by applicable law.

Addresses. The mailing addresses of Grantor (debtor) and Lender (secured party) from which information concerning the security interest granted by this Deed of Trust may be obtained (such as required by the Uniform Commercial Code) are as stated on the first page of this Deed of Trust.

FURTHER ASSURANCES; ATTORNEY-IN-FACT. The following provisions relating to further assurances and attorney-in-fact are a part of this Deed of Trust:

Further Assurances. At any time, and from time to time, upon request of Lender, Grantor will make, execute and deliver, or will cause to be made, executed or delivered, to Lender or to Lender's designee, and when requested by Lender, cause to be filed, recorded, refilled, or re-recorded, as the case may be, at such times and in such offices and places as Lender may deem appropriate, any and all such mortgages, deeds of trust, security deeds, security agreements, financing statements, continuation statements, instruments of further assurance, certificates, and other documents as may, in the sole opinion of Lender, be necessary or desirable in order to effectuate, complete, perfect, continue, or preserve (1) Grantor's obligations under the Note, this Deed of Trust, and the Related Documents, and (2) the liens and security interests created by this Deed of Trust as first and prior liens on the Property, whether now owned or hereafter acquired by Grantor. Unless prohibited by law or Lender agrees to the contrary in writing, Grantor shall reimburse Lender for all costs and expenses incurred in connection with the matters referred to in this paragraph.

Attorney-in-Fact. If Grantor fails to do any of the things referred to in the preceding paragraph, Lender may do so for and in the name of Grantor and at Grantor's expense to the extent permitted by law. For such purposes, Grantor hereby irrevocably appoints Lender as Grantor's attorney-in-fact for the purpose of making, executing, delivering, filing, recording, and doing all other things as may be necessary or desirable, in Lender's sole opinion, to accomplish the matters referred to in the preceding paragraph.

EVENTS OF DEFAULT. Each of the following, at Lender's option, shall constitute an Event of Default under this Deed of Trust:

Payment Default. Grantor fails to make any payment when due under the Indebtedness.

Other Defaults. Grantor fails to comply with or to perform any other term, obligation, covenant or condition contained in this Deed of Trust or in any of the Related Documents or to comply with or to perform any term, obligation, covenant or condition contained in any other agreement between Lender and Grantor.

Compliance Default. Failure to comply with any other term, obligation, covenant or condition contained in this Deed of Trust, the Note or in any of the Related Documents.

Default on Other Payments. Failure of Grantor within the time required by this Deed of Trust to make any payment for taxes or insurance, or any other payment necessary to prevent filing of or to effect discharge of any lien.

Default in Favor of Third Parties. Should Grantor default under any loan, extension of credit, security agreement, purchase or sales agreement, or any other agreement, in favor of any other creditor or person that may materially affect any of Grantor's property or Grantor's ability to repay the Indebtedness or perform their respective obligations under this Deed of Trust or any of the Related Documents.

False Statements. Any warranty, representation or statement made or furnished to Lender by Grantor or on Grantor's behalf under

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this Deed of Trust or the Related Documents is false or misleading in any material respect, either now or at the time made or furnished or becomes false or misleading at any time thereafter.

Defective Collateralization. This Deed of Trust or any of the Related Documents ceases to be in full force and effect (including failure of any collateral document to create a valid and perfected security interest or lien) at any time and for any reason.

Death or Insolvency. The death of Grantor, the insolvency of Grantor, the appointment of a receiver for any part of Grantor's property, any assignment for the benefit of creditors, any type of creditor workout, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against Grantor.

Creditor or Foreclosure Proceedings. Commencement of foreclosure or forfeiture proceedings, whether by judicial proceeding, self-help, repossession or any other method, by any creditor of Grantor or by any governmental agency against any property securing the indebtedness. This includes a garnishment of any of Grantor's accounts, including deposit accounts, with Lender. However, this Event of Default shall not apply if there is a good faith dispute by Grantor as to the validity or reasonableness of the claim which is the basis of the creditor or foreclosure proceeding and if Grantor gives Lender written notice of the creditor or foreclosure proceeding and deposits with Lender monies or a surety bond for the creditor or foreclosure proceeding, in an amount determined by Lender, in its sole discretion, as being an adequate reserve or bond for the dispute.

Breach of Other Agreement. Any breach by Grantor under the terms of any other agreement between Grantor and Lender that is not remedied within any grace period provided therein, including without limitation any agreement concerning any indebtedness or other obligation of Grantor to Lender, whether existing now or later.

Events Affecting Guarantor. Any of the preceding events occurs with respect to any guarantor, endorser, surety, or accommodation party of any of the indebtedness or any guarantor, endorser, surety, or accommodation party dies or becomes incompetent, or revokes or disputes the validity of, or liability under, any Guaranty of the Indebtedness. In the event of a death, Lender, at its option, may, but shall not be required to, permit the guarantor's estate to assume unconditionally the obligations arising under the guaranty in a manner satisfactory to Lender, and, in doing so, cure any Event of Default.

Adverse Change. A material adverse change occurs in Grantor's financial condition, or Lender believes the prospect of payment or performance of the indebtedness is impaired.

Right to Cure. If any default, other than a default in payment is curable and if Grantor has not been given a notice of a breach of the same provision of this Deed of Trust within the preceding twelve (12) months, it may be cured if Grantor, after receiving written notice from Lender demanding cure of such default: (1) cures the default within thirty (30) days; or (2) if the cure requires more than thirty (30) days, immediately initiates steps which Lender deems in Lender's sole discretion to be sufficient to cure the default and thereafter continues and completes all reasonable and necessary steps sufficient to produce compliance as soon as reasonably practical.

RIGHTS AND REMEDIES ON DEFAULT. If an Event of Default occurs under this Deed of Trust, at any time thereafter, Trustee or Lender may exercise any one or more of the following rights and remedies:

Election of Remedies. Election by Lender to pursue any remedy shall not exclude pursuit of any other remedy, and an election to make expenditures or to take action to perform an obligation of Grantor under this Deed of Trust, after Grantor's failure to perform, shall not affect Lender's right to declare a default and exercise its remedies.

Accelerate Indebtedness. Lender shall have the right at its option without notice to Grantor to declare the entire Indebtedness immediately due and payable, including any prepayment penalty which Grantor would be required to pay.

Foreclosure. With respect to all or any part of the Real Property, the Trustee shall have the right to foreclose by notice and sale, and Lender shall have the right to foreclose by judicial foreclosure, in either case in accordance with and to the full extent provided by applicable law. The Trustee is not required to attend a foreclosure sale in person.

UCC Remedies. With respect to all or any part of the Personal Property, Lender shall have all the rights and remedies of a secured party under the Uniform Commercial Code.

Collect Rents. Lender shall have the right, without notice to Grantor to take possession of and manage the Property and collect the Rents, including amounts past due and unpaid, and apply the net proceeds, over and above Lender's costs, against the Indebtedness. In furtherance of this right, Lender may require any tenant or other user of the Property to make payments of rent or use fees directly to Lender. If the Rents are collected by Lender, then Grantor irrevocably designates Lender as Grantor's attorney-in-fact to endorse instruments received in payment thereof in the name of Grantor and to negotiate the same and collect the proceeds. Payments by tenants or other users to Lender in response to Lender's demand shall satisfy the obligations for which the payments are made, whether or not any proper grounds for the demand existed. Lender may exercise its rights under this subparagraph either in person, by agent, or through a receiver.

Appoint Receiver. Lender shall have the right to have a receiver appointed to take possession of all or any part of the Property, with the power to protect and preserve the Property, to operate the Property preceding foreclosure or sale, and to collect the Rents from the Property and apply the proceeds, over and above the cost of the receivership, against the Indebtedness. The receiver may serve without bond if permitted by law. Lender's right to the appointment of a receiver shall exist whether or not the apparent value of the Property exceeds the Indebtedness by a substantial amount. Employment by Lender shall not disqualify a person from serving as a receiver.

Other Remedies. Trustee or Lender shall have any other right or remedy provided in this Deed of Trust or the Note or by law.

Notice of Sale. Lender shall give Grantor reasonable notice of the time and place of any public sale of the Real or Personal Property or of the time after which any private sale or other intended disposition of the Real or Personal Property is to be made. Reasonable notice shall mean notice given at least twenty (20) days before the time of the sale or disposition. Any sale of the Personal Property may be made in conjunction with any sale of the Real Property. A copy of a notice of foreclosure sale shall be served on the Grantor by certified mail, return receipt requested, directed to the address set forth near the beginning of this Deed of Trust, or such other address given to the Lender in writing, and such notice shall be deemed complete when such notice is mailed to the address

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address, notwithstanding the fact that such mail may be returned as refused or undeliverable. A copy of such notice shall be served by certified mail, at least twenty (20) days prior to the sale, upon any subordinate lienholder who has previously notified Lender at the address provided for in this Deed of Trust by certified mail of the existence of a subordinate lien. Grantor waives the posting of notice of sale at the courthouse and agrees that any sale made hereunder may be adjourned from time to time without notice other than oral proclamation of such adjournment at the time and place of sale, or at the time and place of any adjournment sale, if foreclosure proceedings are initiated but not completed, Grantor will immediately reimburse Trustee, to the extent permitted by law, for all costs and expenses incurred by them incident to such proceedings.

Sale of the Property. To the extent permitted by applicable law, Grantor hereby waives any and all rights to have the Property marshalled. In exercising its rights and remedies, the Trustee or Lender shall be free to sell all or any part of the Property together or separately, in one sale or by separate sales. Lender shall be entitled to bid at any public sale on all or any portion of the Property. The Trustee or Lender may sell the Property for cash in hand on the day of sale or under any different, other, or additional sale terms as either, in his or its reasonable discretion, determines to be appropriate or advisable.

Attorneys' Fees; Expenses. If Lender institutes any suit or action to enforce any of the terms of this Deed of Trust, Lender shall be entitled to recover such sum as the court may adjudge reasonable as attorneys' fees at trial and upon any appeal. Whether or not any court action is involved, and to the extent not prohibited by law, all reasonable expenses Lender incurs that in Lender's opinion are necessary at any time for the protection of its interest or the enforcement of its rights shall become a part of the indebtedness payable on demand and shall bear interest at the Note rate from the date of the expenditure until repaid. Expenses covered by this paragraph include, without limitation, however subject to any limits under applicable law, Lender's attorneys' fees and Lender's legal expenses whether or not there is a lawsuit, including attorneys' fees and expenses for bankruptcy proceedings (including efforts to modify or vacate any automatic stay or injunction), appeals, and any anticipated post-judgment collection services, the cost of searching records, obtaining title reports (including foreclosure reports), surveys' reports, and appraisal fees, title insurance, and fees for the Trustee, to the extent permitted by applicable law. Grantor also will pay any court costs, in addition to all other sums provided by law.

Rights of Trustee. Trustee shall have all of the rights and duties of Lender as set forth in this section.

POWERS AND OBLIGATIONS OF TRUSTEE. The following provisions relating to the powers and obligations of Trustee are part of this Deed of Trust:

Powers of Trustee. In addition to all powers of Trustee arising as a matter of law, Trustee shall have the power to take the following actions with respect to the Property upon the written request of Lender and Grantor: (a) join in preparing and filing a map or plat of the Real Property, including the dedication of streets or other rights to the public; (b) join in granting any easement or creating any restriction on the Real Property; and (c) join in any subordination or other agreement affecting this Deed of Trust or the interest of Lender under this Deed of Trust.

Obligations to Notify. Trustee shall not be obligated to notify any other party of a pending sale under any other trust deed or lien, or of any action or proceeding in which Grantor, Lender, or Trustee shall be a party, unless the action or proceeding is brought by Trustee.

Trustee. Trustee shall meet all qualifications required for Trustee under applicable law. Trustee is authorized to act by agent or attorney in the execution of this trust. In addition to the rights and remedies set forth above, with respect to all or any part of the Property, the Trustee shall have the right to foreclose by notice and sale, and Lender shall have the right to foreclose by judicial foreclosure, in either case in accordance with and to the full extent provided by applicable law.

Successor Trustee. Lender, at Lender's option, may from time to time appoint a successor Trustee to any Trustee appointed under this Deed of Trust by an instrument executed and acknowledged by Lender and recorded in the office of the Clerk of the County Commission of Kanawha County, West Virginia. The instrument shall contain, in addition to all other matters required by state law, the names of the original Lender, Trustee, and Grantor, the book and page where this Deed of Trust is recorded, and the name and address of the successor trustee, and the instrument shall be executed and acknowledged by Lender or its successors in interest. The successor trustee, without conveyance of the Property, shall succeed to all the title, power, and duties conferred upon the Trustee in this Deed of Trust and by applicable law. This procedure for substitution of Trustee shall govern to the exclusion of all other provisions for substitution.

NOTICES. Except for any notice required under applicable law to be given in another manner, any notice, request, demand or other communication required or permitted to be given under this Deed of Trust shall be effective upon the deposit of such notice, request, demand or other communication, in writing, in the regular United States mail, postage prepaid, addressed to the party in question at its address shown near the beginning of this Deed of Trust. Addresses for notices, requests, demands or other communications may be changed by a notice mailed in the manner as provided above. Any notice of other liens which may be given to Lender pursuant to W. Va. Code Section 38-1-14 shall be in writing, addressed to Lender at Lender's address provided for in this Deed of Trust, which notice shall be effective when received by Lender. Unless otherwise provided or required by law, if there is more than one Grantor, any notice given by Lender to any Grantor is deemed to be notice given to all Grantors.

MISCELLANEOUS PROVISIONS. The following miscellaneous provisions are a part of this Deed of Trust:

Amendments. This Deed of Trust, together with any Related Documents, constitutes the entire understanding and agreement of the parties as to the matters set forth in this Deed of Trust. No alteration of or amendment to this Deed of Trust shall be effective unless given in writing and signed by the party or parties sought to be charged or bound by the alteration or amendment.

Annual Reports. If the Property is used for purposes other than Grantor's residence, Grantor shall furnish to Lender, upon request, a certified statement of net operating income received from the Property during Grantor's previous fiscal year in such form and detail as Lender shall require. "Net operating income" shall mean all cash receipts from the Property less all cash expenditures made in connection with the operation of the Property.

Caption Headings. Caption headings in this Deed of Trust are for convenience purposes only and are not to be used to interpret or define the provisions of this Deed of Trust.

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Merger. There shall be no merger of the interest or estate created by this Deed of Trust with any other interest or estate in the Property at any time held by or for the benefit of Lender in any capacity, without the written consent of Lender.

Choice of Venue. If there is a lawsuit, Grantor agrees upon Lender's request to submit to the jurisdiction of the courts of Kanawha County, State of West Virginia.

No Waiver by Lender. Lender shall not be deemed to have waived any rights under this Deed of Trust unless such waiver is given in writing and signed by Lender. No delay or omission on the part of Lender in exercising any right shall operate as a waiver of such right or any other right. A waiver by Lender of a provision of this Deed of Trust shall not prejudice or constitute a waiver of Lender's right otherwise to demand strict compliance with that provision or any other provision of this Deed of Trust. No prior waiver by Lender, nor any course of dealing between Lender and Grantor, shall constitute a waiver of any of Lender's rights or of any of Grantor's obligations as to any future transactions. Whenever the consent of Lender is required under this Deed of Trust, the granting or such consent by Lender in any instance shall not constitute continuing consent to subsequent instances where such consent is required and in all cases such consent may be granted or withheld in the sole discretion of Lender.

Severability. If a court of competent jurisdiction finds any provision of this Deed of Trust to be illegal, invalid, or unenforceable as to any circumstance, that finding shall not make the offending provision illegal, invalid, or unenforceable as to any other circumstance. If feasible, the offending provision shall be considered modified so that it becomes legal, valid and enforceable. If the offending provision cannot be so modified, it shall be considered deleted from this Deed of Trust. Unless otherwise required by law, the illegality, invalidity, or unenforceability of any provision of this Deed of Trust shall not affect the legality, validity or enforceability of any other provision of this Deed of Trust.

Successors and Assigns. Subject to any limitations stated in this Deed of Trust on transfer of Grantor's interest, this Deed of Trust shall be binding upon and inure to the benefit of the parties, their successors and assigns. If ownership of the Property becomes vested in a person other than Grantor, Lender, without notice to Grantor, may deal with Grantor's successors with reference to this Deed of Trust and the indebtedness by way of forbearance or extension without releasing Grantor from the obligations of this Deed of Trust or liability under the Indebtedness.

Time is of the Essence. Time is of the essence in the performance of this Deed of Trust.

Waiver of Homestead Exemption. To the extent permitted by applicable law, Grantor hereby releases and waives all rights and benefits of the homestead exemption laws of the State of West Virginia as to all indebtedness secured by this Deed of Trust.

DEFINITIONS. The following capitalized words and terms shall have the following meanings when used in this Deed of Trust. Unless specifically stated to the contrary, all references to dollar amounts shall mean amounts in lawful money of the United States of America. Words and terms used in the singular shall include the plural, and the plural shall include the singular, as the context may require. Words and terms not herein defined in this Deed of Trust shall have the meanings attributed to such terms in the Uniform Commercial Code:

Bankruptcy. The word "Bankruptcy" means the filing of a petition in bankruptcy with the United States Bankruptcy Court for the District of Columbia, or any other federal court having jurisdiction over the bankruptcy of a debtor.

Borrower. The word "Borrower" means Todd Lesser and includes all co-signers and co-makers signing the Note.

Deed of Trust. The word "Deed of Trust" means this Deed of Trust among Grantor, Lender, and Trustee, and includes without limitation all assignments and security interest provisions relating to the Personal Property and Rents.

Default. The word "Default" means the Default set forth in this Deed of Trust in the section titled "Default".

Environmental Laws. The words "Environmental Laws" mean any and all state, federal and local statutes, regulations and ordinances relating to the protection of human health or the environment, including without limitation the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. Section 9601, et seq. ("CERCLA"), the Superfund Amendments and Reauthorization Act of 1986, Pub. L. No. 99-499 ("SARA"), the Hazardous Materials Transportation Act, 49 U.S.C. Section 1801, et seq., the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901, et seq., or other applicable state or federal laws, rules, or regulations adopted pursuant thereto.

Event of Default. The words "Event of Default" mean any of the events of default set forth in this Deed of Trust in the events of default section of this Deed of Trust.

Grantor. The word "Grantor" means Todd Lesser.

Guaranty. The word "Guaranty" means the guaranty from guarantor, endorser, surety, or accommodation party to Lender, including without limitation a guaranty of all or part of the Note.

Hazardous Substances. The words "Hazardous Substances" mean materials that, because of their quantity, concentration or physical, chemical or infectious characteristics, may cause or pose a present or potential hazard to human health or the environment when improperly used, treated, stored, disposed of, generated, manufactured, transported or otherwise handled. The words "Hazardous Substances" are used in their very broadest sense and include without limitation any and all hazardous or toxic substances, materials or waste as defined by or listed under the Environmental Laws. The term "Hazardous Substances" also includes, without limitation, petroleum and petroleum by-products or any fraction thereof and asbestos.

Improvements. The word "Improvements" means all existing and future improvements, buildings, structures, mobile homes affixed on the Real Property, facilities, additions, replacements and other construction on the Real Property.

Indebtedness. The word "Indebtedness" means all principal, interest, and other amounts, costs and expenses payable under the Note or Related Documents, together with all renewals of, extensions of, modifications of, and substitutions for the Note or Related Documents and any amounts expended or advanced by Lender to discharge Grantor's obligations or expenses incurred by Trustee or Lender to enforce Grantor's obligations under this Deed of Trust, together with interest on such amounts as provided in this Deed of Trust.

Lender. The word "Lender" means WestBanco Bank, Inc., its successors and assigns.

Note. The word "Note" means the promissory note dated November 12, 2004, in the original principal amount of

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(Continued)

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\$720,000.00 from Grantor to Lender, together with all renewals of, extensions of, modifications of, refinancings of, consolidations of, and substitutions for the promissory note or agreement. **NOTICE TO GRANTOR: THE NOTE CONTAINS A VARIABLE INTEREST RATE.**

Personal Property. The words "Personal Property" mean all equipment, fixtures, and other articles of personal property now or hereafter owned by Grantor, and now or hereafter attached or affixed to the Real Property; together with all accretions, parts, and additions to, all replacements of, and all substitutions for, any of such property; and together with all proceeds (including without limitation all insurance proceeds and refunds of premiums) from any sale or other disposition of the Property.

Property. The word "Property" means collectively the Real Property and the Personal Property.

Real Property. The words "Real Property" mean the real property, interests and rights, as further described in this Deed of Trust.

Related Documents. The words "Related Documents" mean all promissory notes, credit agreements, loan agreements, environmental agreements, guarantees, security agreements, mortgages, deeds of trust, security deeds, collateral mortgages, and all other instruments, agreements and documents, whether now or hereafter existing, executed in connection with the indebtedness.

Rents. The word "Rents" means all present and future rents, revenues, income, issues, royalties, profits, and other benefits derived from the Property.

Trustee. The word "Trustee" means Matthew D. Smith, whose address is in the County of, Kanawha, WV and any substitute or successor trustees.

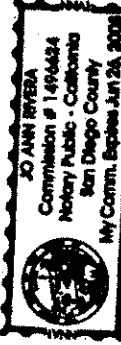
GRANTOR ACKNOWLEDGES HAVING READ ALL THE PROVISIONS OF THIS DEED OF TRUST, AND GRANTOR AGREES TO ITS TERMS.

GRANTOR:

X Todd Lessor

Todd Lessor

INDIVIDUAL ACKNOWLEDGMENT

STATE OF CaliforniaCOUNTY OF San Diego

On this day before me, the undersigned Notary Public, personally appeared Todd Lessor, to me known to be the individual described in and who executed the Deed of Trust, and acknowledged that he or she signed the Deed of Trust as his or her free and voluntary act and deed, for the uses and purposes therein mentioned.

Given under my hand and official seal this 15 day of November, 2014.

By [Signature] Residing at San Diego, CA

Notary Public in and for the State of CA My commission expires 6/24/08

This Deed of Trust prepared by: X

Matthew D. SmithName of Signer: WesBanco Bank, Inc.

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Exhibit A

All that certain lot or parcel of land, together with the improvements thereon and the appurtenances thereunto belonging situate on the easterly side of Capitol Street, in the City of Charleston, Charleston East Tax District, Kanawha County, West Virginia, between Quarrier and Lee Streets in said City, fronting about twenty-four (24) feet and six (6) inches, more or less, on Capitol Street and running back with even width about One Hundred Twenty-six (126) feet, more or less to an alley extending from Quarrier Street to Lee Street and being all of the same property conveyed unto Todd Lesser by EBW Associates A Limited Liability Company, a West Virginia limited liability company, by deed dated November 5, 2004, to be filed and placed of record in the said Clerk's office immediately preceding the recordation of this instrument, reference to which deed is here made for a more particular description of the property hereby conveyed and for any and all other pertinent purposes.

This instrument was presented to the Clerk of the County
Commission of Kanawha County, West Virginia, on
and the same is admitted to record.

NOV 16 2004

Teste:

 Clerk
Kanawha County Commission



PROMISSORY NOTE

Principal	Loan Date	Maturity	Loan No	Call / Coll	Account	Officer	Initials
\$720,000.00	11-12-2004	11-12-2024	5390	RZ		***	

References in the shaded area are for Lender's use only and do not limit the applicability of this document to any particular loan or item.
Any item above containing "****" has been omitted due to text length limitations.

Borrower: Todd Lesser
2717 Hidden Valley Road
La Jolla, CA 92037

Lender: WesBanco Bank, Inc.
West Side Office
300 Tennessee Avenue
Charleston, WV 25302
(304) 347-4000

Principal Amount: \$720,000.00

Date of Note: November 12, 2004

PROMISE TO PAY. Todd Lesser ("Borrower") promises to pay to WesBanco Bank, Inc. ("Lender"), or order, in lawful money of the United States of America, the principal amount of Seven Hundred Twenty Thousand & 00/100 Dollars (\$720,000.00), together with interest on the unpaid principal balance from November 12, 2004, until paid in full.

PAYMENT. Subject to any payment changes resulting from changes in the Index, Borrower will pay this loan in accordance with the following payment schedule: 36 monthly consecutive principal and interest payments in the initial amount of \$4,901.60 each, beginning December 12, 2004, with interest calculated on the unpaid principal balances at an interest rate of 5.375% per annum; 203 monthly consecutive principal and interest payments in the initial amount of \$4,901.60 each, beginning December 12, 2007, with interest calculated on the unpaid principal balances at an interest rate based on the weekly average yield on US Treasury Securities adjusted to a constant maturity of three years (currently 2.910%), plus a margin of 2.500 percentage points, the sum rounded to the nearest 0.125 percent, resulting in an initial interest rate of 5.375%; and one principal and interest payment of \$4,902.30 on November 12, 2024, with interest calculated on the unpaid principal balances at an interest rate based on the weekly average yield on US Treasury Securities adjusted to a constant maturity of three years (currently 2.910%), plus a margin of 2.500 percentage points, the sum rounded to the nearest 0.125 percent, resulting in an initial interest rate of 5.375%. This estimated final payment is based on the assumption that all payments will be made exactly as scheduled and that the Index does not change; the actual final payment will be for all principal and accrued interest not yet paid, together with any other unpaid amounts under this Note. Unless otherwise agreed or required by applicable law, payments will be applied first to any accrued unpaid interest; then to principal; then to any unpaid collection costs; and then to any late charges. Interest on this Note is computed on a 365/365 simple interest basis; that is, by applying the ratio of the annual interest rate over the number of days in a year (366 during leap years), multiplied by the outstanding principal balance, multiplied by the actual number of days the principal balance is outstanding. Borrower will pay Lender at Lender's address shown above or at such other place as Lender may designate in writing.

VARIABLE INTEREST RATE. The interest rate on this Note is subject to change from time to time based on changes in an independent index which is the weekly average yield on US Treasury Securities adjusted to a constant maturity of three years (the "Index"). The Index is not necessarily the lowest rate charged by Lender on its loans. If the Index becomes unavailable during the term of this loan, Lender may designate a substitute index after notice to Borrower. Lender will tell Borrower the current Index rate upon Borrower's request. The interest rate change will not occur more often than each three years. Borrower understands that Lender may make loans based on other rates as well. The Index currently is 2.910% per annum. The interest rate or rates to be applied to the unpaid principal balance of this Note will be the rate or rates set forth herein in the "Payment" section. Notwithstanding any other provision of this Note, after the first payment stream, the interest rate for each subsequent payment stream will be effective as of the last payment date of the just-ending payment stream. NOTICE: Under no circumstances will the interest rate on this Note be more than the maximum rate allowed by applicable law. Whenever increases occur in the interest rate, Lender, at its option, may do one or more of the following: (A) increase Borrower's payments to ensure Borrower's loan will pay off by its original final maturity date, (B) increase Borrower's payments to cover accruing interest, (C) increase the number of Borrower's payments, and (D) continue Borrower's payments at the same amount and increase Borrower's final payment.

PREPAYMENT. Borrower may pay without penalty all or a portion of the amount owed earlier than it is due. Early payments will not, unless agreed to by Lender in writing, relieve Borrower of Borrower's obligation to continue to make payments under the payment schedule. Rather, early payments will reduce the principal balance due and may result in Borrower's making fewer payments. Borrower agrees not to send Lender payments marked "paid in full", "without recourse", or similar language. If Borrower sends such a payment, Lender may accept it without losing any of Lender's rights under this Note, and Borrower will remain obligated to pay any further amount owed to Lender. All written communications concerning disputed amounts, including any check or other payment instrument that indicates that the payment constitutes "payment in full" of the amount owed or that is tendered with other conditions or limitations or as full satisfaction of a disputed amount must be mailed or delivered to: WesBanco Bank, Inc.; West Side Office; 300 Tennessee Avenue; Charleston, WV 25302.

LATE CHARGE. If a payment is 10 days or more late, Borrower will be charged 5.000% of the unpaid portion of the regularly scheduled payment or \$50.00, whichever is greater.

INTEREST AFTER DEFAULT. Upon default, including failure to pay upon final maturity, Lender, at its option, may, if permitted under applicable law, increase the variable interest rate on this Note by 2.000 percentage points. The interest rate will not exceed the maximum rate permitted by applicable law.

DEFAULT. Each of the following shall constitute an event of default ("Event of Default") under this Note:

Payment Default. Borrower fails to make any payment when due under this Note.

Other Defaults. Borrower fails to comply with or to perform any other term, obligation, covenant or condition contained in this Note or in any of the related documents or to comply with or to perform any term, obligation, covenant or condition contained in any other agreement between Lender and Borrower.

Default in Favor of Third Parties. Borrower or any Grantor defaults under any loan, extension of credit, security agreement, purchase or sales agreement, or any other agreement, in favor of any other creditor or person that may materially affect any of Borrower's property or Borrower's ability to repay this Note or perform Borrower's obligations under this Note or any of the related documents.

False Statements. Any warranty, representation or statement made or furnished to Lender by Borrower or on Borrower's behalf under this Note or the related documents is false or misleading in any material respect, either now or at the time made or furnished or becomes false

PROMISSORY NOTE **(Continued)**

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or misleading at any time thereafter.

Death or Insolvency. The death of Borrower or the dissolution or termination of Borrower's existence as a going business, the insolvency of Borrower, the appointment of a receiver for any part of Borrower's property, any assignment for the benefit of creditors, any type of creditor workout, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against Borrower.

Creditor or Forfeiture Proceedings. Commencement of foreclosure or forfeiture proceedings, whether by judicial proceeding, self-help, repossession or any other method, by any creditor of Borrower or by any governmental agency against any collateral securing the loan. This includes a garnishment of any of Borrower's accounts, including deposit accounts, with Lender. However, this Event of Default shall not apply if there is a good faith dispute by Borrower as to the validity or reasonableness of the claim which is the basis of the creditor or forfeiture proceeding and if Borrower gives Lender written notice of the creditor or forfeiture proceeding and deposits with Lender monies or a surety bond for the creditor or forfeiture proceeding, in an amount determined by Lender, in its sole discretion, as being an adequate reserve or bond for the dispute.

Events Affecting Guarantor. Any of the preceding events occurs with respect to any guarantor, endorser, surety, or accommodation party of any of the indebtedness or any guarantor, endorser, surety, or accommodation party dies or becomes incompetent, or revokes or disputes the validity of, or liability under, any guaranty of the indebtedness evidenced by this Note. In the event of a death, Lender, at its option, may, but shall not be required to, permit the guarantor's estate to assume unconditionally the obligations arising under the guaranty in a manner satisfactory to Lender, and, in doing so, cure any Event of Default.

Adverse Change. A material adverse change occurs in Borrower's financial condition, or Lender believes the prospect of payment or performance of this Note is impaired.

Cure Provisions. If any default, other than a default in payment is curable and if Borrower has not been given a notice of a breach of the same provision of this Note within the preceding twelve (12) months, it may be cured if Borrower, after receiving written notice from Lender demanding cure of such default: (1) cures the default within thirty (30) days; or (2) if the cure requires more than thirty (30) days, immediately initiates steps which Lender deems in Lender's sole discretion to be sufficient to cure the default and thereafter continues and completes all reasonable and necessary steps sufficient to produce compliance as soon as reasonably practical.

LENDER'S RIGHTS. Upon default, Lender may declare the entire unpaid principal balance on this Note and all accrued unpaid interest immediately due, and then Borrower will pay that amount.

ATTORNEYS' FEES; EXPENSES. Lender may hire or pay someone else to help collect this Note if Borrower does not pay. Borrower will pay Lender that amount. This includes, subject to any limits under applicable law, Lender's attorneys' fees and Lender's legal expenses, whether or not there is a lawsuit, including attorneys' fees, expenses for bankruptcy proceedings (including efforts to modify or vacate any automatic stay or injunction), and appeals. If not prohibited by applicable law, Borrower also will pay any court costs, in addition to all other sums provided by law.

CHOICE OF VENUE. If there is a lawsuit, Borrower agrees upon Lender's request to submit to the jurisdiction of the courts of Kanawha County, State of West Virginia.

RIGHT OF SETOFF. To the extent permitted by applicable law, Lender reserves a right of setoff in all Borrower's accounts with Lender (whether checking, savings, or some other account). This includes all accounts Borrower holds jointly with someone else and all accounts Borrower may open in the future. However, this does not include any IRA or Keogh accounts, or any trust accounts for which setoff would be prohibited by law. Borrower authorizes Lender, to the extent permitted by applicable law, to charge or setoff all sums owing on the indebtedness against any and all such accounts, and, at Lender's option, to administratively freeze all such accounts to allow Lender to protect Lender's charge and setoff rights provided in this paragraph.

COLLATERAL. Borrower acknowledges this Note is secured by the following collateral described in the security instruments listed herein:

- (A) a Deed of Trust dated November 12, 2004, to a trustee in favor of Lender on real property located in Kanwha County, State of West Virginia.
- (B) an Assignment of All Rents to Lender on real property located in Kanwha County, State of West Virginia.
- (C) equipment and fixtures described in a Commercial Security Agreement dated November 12, 2004.

CALL PROVISION. On the tenth (10th) anniversary of this Note, the Lender shall have a period of thirty (30) days to notify Borrower in writing of Lender's intention to call this Note. If Lender notifies Borrower of such a call of this Note, Borrower shall have a period of six (6) months from the date of such notice to pay all outstanding principal and interest. If Lender does not provide written notice of a call of this Note within the above- specified period, then the call provision shall lapse and be without further effect thereafter.

SUCCESSOR INTERESTS. The terms of this Note shall be binding upon Borrower, and upon Borrower's heirs, personal representatives, successors and assigns, and shall inure to the benefit of Lender and its successors and assigns.

GENERAL PROVISIONS. Lender may delay or forgo enforcing any of its rights or remedies under this Note without losing them. Borrower and any other person who signs, guarantees or endorses this Note, to the extent allowed by law, waive presentment, demand for payment, and notice of dishonor. Upon any change in the terms of this Note, and unless otherwise expressly stated in writing, no party who signs this Note, whether as maker, guarantor, accommodation maker or endorser, shall be released from liability. All such parties agree that Lender may renew or extend (repeatedly and for any length of time) this loan or release any party or guarantor or collateral; or impair, fail to realize upon or perfect Lender's security interest in the collateral; and take any other action deemed necessary by Lender without the consent of or notice to anyone. All such parties also agree that Lender may modify this loan without the consent of or notice to anyone other than the party with whom the modification is made. The obligations under this Note are joint and several.

WEST VIRGINIA INSURANCE NOTICE. Unless Borrower provides Lender with evidence of the insurance coverage required by Borrower's agreement with Lender, Lender may purchase insurance at Borrower's expense to protect Lender's interests in the collateral. This insurance may, but need not, protect Borrower's interests. The coverage that Lender purchases may not pay any claim that Borrower makes or any claim that is made against Borrower in connection with the collateral. Borrower may later cancel any insurance purchased by Lender, but only after providing Lender with evidence that Borrower has obtained insurance as required by their agreement. If Lender purchases insurance for the collateral, Borrower will be responsible for the costs of that insurance, including interest and any other charges Lender may impose in connection with the placement of the insurance, until the effective date of the cancellation or expiration of the insurance. The costs of the insurance may be added to Borrower's total outstanding balance or obligation. The costs of the insurance may be more than the cost of insurance Borrower may be able to obtain on Borrower's own.

Loan No: [REDACTED] 5390

**PROMISSORY NOTE
(Continued)**

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PRIOR TO SIGNING THIS NOTE, BORROWER READ AND UNDERSTOOD ALL THE PROVISIONS OF THIS NOTE, INCLUDING THE VARIABLE INTEREST RATE PROVISIONS. BORROWER AGREES TO THE TERMS OF THE NOTE.

BORROWER ACKNOWLEDGES RECEIPT OF A COMPLETED COPY OF THIS PROMISSORY NOTE.

BORROWER:

x Todd Lesser
Todd Lesser

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

WESBANCO BANK, INC.,

Plaintiff,

v.

CIVIL ACTION NO: 2:19-cv-00821
HONORABLE IRENE C. BERGER

TODD LESSER,

Defendant.

AFFIDAVIT

I, James W. Lane, Jr., do hereby solemnly swear:

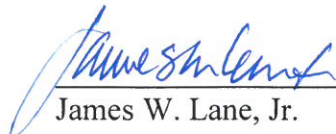
1. I am an attorney at Flaherty Sensabaugh Bonasso PLLC (the "Firm") and I am familiar with the work performed by the Firm for WesBanco Bank, Inc. ("WesBanco"), regarding activity to collect on Mr. Lesser's debt owed to WesBanco Bank, Inc. following a foreclosure sale, including preparing and pursuing the Complaint against the Defendant, Todd Lesser (the "Defendant"), in this civil action.

2. The Complaint seeks judgment for the outstanding deficiency balance for a loan made to the Defendant.

3. In addition to the outstanding loan balance, WesBanco's Complaint also seeks judgment for WesBanco's attorneys' fees and costs associated with preparing and pursuing the Complaint against the Defendant.

4. As of April 7, 2020, WesBanco has incurred a total of \$4812.00 in attorneys' fees and \$943.00 in costs for work performed by the Firm in connection with this civil action.

Executed: April 15, 2020.

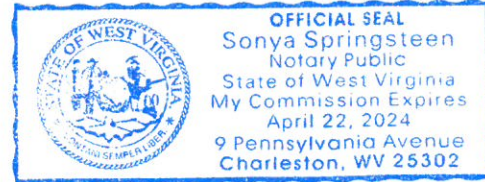

James W. Lane, Jr.

STATE OF West Virginia:
COUNTY OF Kanawha :

Taken, subscribed and sworn to before me by James W. Lane, Jr., on April 15, 2020

My commission expires: April 22, 2024 .

Notary Public: Sonya Springsteen .



**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

WESBANCO BANK, INC.,

Plaintiff,

v.

CIVIL ACTION NO: 2:19-821

TODD LESSER,

Defendant.

AFFIDAVIT OF SERVICE

I, Gregory Long, do hereby solemnly swear:

1. I am a private investigator in the San Diego, California area.
2. On December 20, 2019, counsel for Plaintiff WesBanco Bank, Inc. ("WesBanco"), engaged my services to locate and personally serve the Defendant, Todd Lesser (the "Defendant"), with a copy of the Complaint for Civil Action No. 2:19-821 in California.
3. I attempted to locate and serve the Defendant at the office space owned by him located at 4008 Taylor Street #201, San Diego, CA 92110. However, the office space was all locked up with no tenants.
4. After investigating the various properties owned by the Defendant, I determined that the best opportunity for a successful service of process was at the Defendant's home residence located at 2717 Hidden Valley Road, La Jolla, California 92037-4028 (the "Residence").
5. I visited the Residence on multiple occasions and attempted service by knocking on the front door. Although I could hear noise coming from the Residence, nobody ever came to answer my knocking other than the Defendant's dog.
6. On Sunday, January 13, 2020, I was parked at the end of the Defendant's driveway and observed who I believed to be the Defendant's spouse taking the trash out. She is a white female with long blonde hair, in her mid-thirties, and a height and weight of approximately five feet six inches and one hundred thirty-five pounds. I exited my vehicle and attempted to serve her. However, as soon as she noticed me, she quickly made her way back up the driveway to the Residence. By the time I reached the top of the Defendant's driveway she was already back inside the Residence and nobody answered my subsequent knocking on the front door.

7. On Sunday, February 9, 2020, I conducted a stakeout in hopes that I would effectuate service on the Defendant or his spouse while they took the trash out. My stakeout was unsuccessful as I saw neither the Defendant nor his spouse.

8. I returned to the Residence the following morning, Monday, February 10, 2020. At approximately 7:55 a.m., a grey BMW departed from the Defendant's driveway. I followed the BMW in my vehicle. Because there was no way to hide my vehicle, the BMW sped away and deliberately took a detour to disallow me to meet it in a crowded intersection where I could jump out of my vehicle and place the service papers on the BMW's windshield.

9. Following this unsuccessful attempt, I ran the BMW's license plate and confirmed that the vehicle was registered to the Defendant's spouse, Andrea Lesser.

10. On Tuesday, February 18, 2020, I arrived at the Residence for another stakeout. At approximately 6:30 a.m. I parked my vehicle a safe distance away from the Residence to avoid detection. I exited my vehicle and walked to the end of the Defendant's driveway and sat on a chair and waited for any sign of the Defendant or his spouse.

11. At approximately 8:01 a.m., the Defendant's spouse drove down the driveway in her vehicle. I verbally informed her that she'd been served as she drove by. A photograph of the Defendant's spouse's vehicle driving past me at 8:01 a.m. on February 18, 2020 is attached as **Exhibit A**.

12. I then proceeded up the Defendant's driveway and left a copy of the Complaint and Summons at the Residence's front door. A photograph of the service papers as I left them on the Residence's front door is attached as **Exhibit B**.

13. On February 18, 2020, I, a credible person over the age of twenty-one (21) years old, being first duly sworn, on my oath state that I personally served a Complaint upon the Defendant's spouse, located at 2717 Hidden Valley Road, La Jolla, California 92037-4028.

14. Prior to successfully serving the Complaint upon the Defendant's spouse, the Defendant and/or his spouse evaded my attempts at service on multiple occasions.

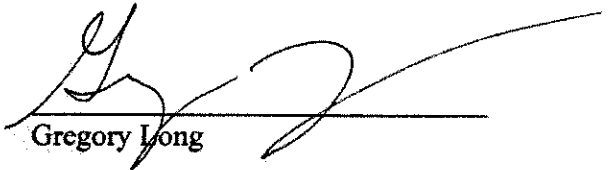
15. After successfully serving the Complaint upon the Defendant's spouse, I mailed copies of the Summons and Complaint to the Defendant at the address where I left the documents, 2717 Hidden Valley Road, La Jolla, California 92037-4028.

16. I have personally served numerous parties over the years by utilizing the same methods that I employed in this case. All of those completed services have been upheld by the courts of California and found to be sufficient under the Rules of Civil Procedure.

17. I have personal knowledge of the foregoing and am competent to be a witness.

18. I certify under penalty of perjury that the foregoing is true and correct

Executed: February 28, 2020.


Gregory Long

STATE OF California:
COUNTY OF San Diego

Taken, subscribed and sworn to before me by Gregory Long, on February 28, 2020.

My commission expires: March 20, 2022

Notary Public: 

